COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Complaint of DSCI Corporation for Declaratory Orders to Ensure Verizon-Massachusetts Compliance with Resale Obligations with Respect to Customer Specific Pricing Contracts	)	D.T.E. 05-28

August 17, 2005

HEARING OFFICER RULING
ON MOTION FOR CONFIDENTIAL TREATMENT
FILED BY VERIZON NEW ENGLAND, INC.

I. INTRODUCTION

On August 3, 2005, Verizon New England, Inc., d/b/a Verizon-Massachusetts ("Verizon") filed with the Department of Telecommunications and Energy ("Department") a Motion for Confidential Treatment of its response to record request RR-DTE-VZ-4 ("Motion"). In its response to RR-DTE-VZ-4, Verizon provided information requested by the Department regarding Verizon's negotiations with a non-party competitive local exchange carrier ("CLEC") for customer specific pricing ("CSP") terms and conditions for purposes of resale.[1]

II. VERIZON'S POSITION

In its Motion, Verizon asserts that the information consists of "confidential information regarding Verizon's course of dealings with a specific CLEC as well as the manner in which that carrier serves its customers" (Verizon Motion at 3). Verizon also states that the parties signed a nondisclosure agreement to ensure that the information not become part of the public domain (id. at 3). In support of its position, Verizon cites federal law, and specifically contends that the Telecommunications Act of 1996 provides further protection for such information provided between an incumbent local exchange carrier and CLEC (id. at 2, citing 47 U.S.C. § 151, et seq.; 47 U.S.C. § 222. Verizon did not provide DSCI with a copy

[1] The Department had initially requested the information as an information request. In response to the information request, Verizon declined to provide the requested information to the Department, stating that it was proprietary, competitively sensitive, and subject to a nondisclosure agreement (see Exh. DTE-VZ-1-1). At the evidentiary hearing, the Department renewed its request for the information by record request.

of its unredacted response to RR-DTE-VZ-4 and asked that the Department "refrain from placing any portion of that response in the public record or otherwise making that information available for public review" (id.). DSCI did not file an objection to Verizon's Motion.

III. STANDARD OF REVIEW

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states in part that:

> The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, § 5D, permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. Specifically, G.L. c. 25, § 5D, is an exemption recognized by G.L. c. 4, § 7, cl. twenty-sixth (a) ("specifically or by necessary implication exempted from disclosure by statute").

G.L. c. 25, § 5D, establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute "trade secrets, [or] confidential, competitively sensitive or other proprietary information"; second, the party seeking protection must overcome the G.L. c. 66, § 10, statutory presumption that all such information is public information by "proving" the need for its non-disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. See G.L. c. 25, § 5D.

Previous Department applications of the standard set forth in G.L. c. 25, § 5D, reflect the narrow scope of this exemption. See Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996) (protecting from disclosure electricity contract prices, but not other contract terms, such as the identity of the customer); Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (all requests for exemption of terms and conditions of gas supply contracts from public disclosure denied, except for those terms pertaining to pricing).

All parties are reminded that requests for protective treatment have not and will not be granted automatically by the Department. A party's willingness to enter into a non-disclosure agreement with other parties does not resolve the question of whether the response, once it becomes a public record in one of our proceedings, should be granted protective treatment. In short, what parties may agree to share and the terms of that sharing are not dispositive of the Department's scope of action under G.L. c. 25, § 5D, or c. 66, § 10. See Boston Edison Company, D.T.E. 97-95, Interlocutory Order on (1) Motion for Order on Burden of Proof, (2) Proposed Nondisclosure Agreement, and (3) Requests for Protective Treatment (July 2, 1998).

IV. ANALYSIS AND FINDINGS

Verizon bears the burden of proving that the information for which protection is sought constitutes trade secrets, or confidential, competitively sensitive, or proprietary information. G.L. c. 25, § 5D. I find that Verizon has met its burden. While the signing of a nondisclosure agreement between Verizon and a non-party CLEC is not dispositive, I agree that public disclosure of certain of the information provided in the response could compromise the integrity of Verizon's negotiations and place Verizon and the negotiating entity at a competitive disadvantage. However, at the evidentiary hearing, Verizon's witness, Ms. Pamela McCann, testified that nationwide, no CLEC had obtained or implemented a CSP from Verizon (Tr. at 99). As such, it is inappropriate to grant protective treatment to the outcome of the negotiations. Therefore, I grant Verizon's request for confidential treatment of its response to RR-DTE-VZ-4 as to the name and location of the CLEC. The grant is limited to this specific fact scenario and should not be construed to extend to any future instance where a CLEC has implemented resale of a Verizon CSP regardless of the location nationwide.

V. RULING

Verizon's Motion for Confidential Treatment is granted, as discussed herein.

Under the provisions of 220 C.M.R. § 1.06(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within two (2) days of the appeal.

/s/
Carol M. Pieper
Hearing Officer